In the Matter of A. S. CAMPBELL COMPANY, INC., EMPLOYER *and* UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, CIO, PETITIONER

Case No. 1-R-3134.—Decided November 25, 1946

Mr. Edmund V. Maloney, of Boston, Mass., for the Employer.
Mr. Arthur R. Hannigan, of Boston, Mass., for the Petitioner.
Mr. Conrad A. Wickham, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Boston, Massachusetts, on August 27, 1946, before Thomas H. Ramsey, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

A. S. Campbell Company, Inc., a Massachusetts corporation, is primarily engaged at its plant in East Boston, Massachusetts, in the manufacture of automobile bumpers and guards, and plastic drain pipes for refrigerators, and in the assembly of farm trailers. During the year 1945, it purchased for use in its operations materials valued in excess of $500,000, of which 90 percent represented shipments from points outside the Commonwealth of Massachusetts. During the same period, the Employer manufactured products valued in excess of $2,000,000, of which 85 percent represented shipments to points outside the Commonwealth.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

The Petitioner is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

Petitioner, which presently represents the Employer's production and maintenance employees,[1] seeks a unit of the Employer's plant guards at its plant in East Boston, Massachusetts, including the night guard, but excluding the gardener and the chief guard. The Employer contends that the unit is inappropriate on the grounds that (1) the guards themselves are not engaged in interstate commerce and are therefore not entitled to the benefits of the Act, and (2) they are special policemen of the City of Boston, and, as such, may not be represented by the same union that represents the Employer's production and maintenance employees. If overruled in these respects, the Employer agrees generally with Petitioner concerning the composition of the unit except that it would also include the chief guard.

The guards in issue perform the customary duties of plant-protection personnel, including such monitorial functions as checking to see that employees moving in and out of the plant punch their time cards, inspecting packages and employee passes, and investigating infractions of the company rules. They are uniformed and carry firearms, and by virtue of their status as special policemen on the Boston Police Force, they have the authority to arrest within the confines of the Employer's plant. In the event of industrial unrest or other emergency their oath as special policemen requires them to enforce municipal and State laws. The Employer, however, pays them and exercises complete control over their duties and employment status.

We find no merit in the Employer's first contention that its guards should be denied the benefits of the Act allegedly because they are not engaged in interstate commerce. It is clear that the Employer itself is engaged in such commerce, and it is well established that a specific determination that the duties of particular employees sought to be represented affect interstate commerce is not a prerequisite to assertion of jurisdiction by the Board.[2] Nor do we find merit in the

[1] As the result of an election held on September 18, 1941, under the auspices of the State Board of Conciliation of the Commonwealth of Massachusetts, Petitioner was recognized by the Employer as the exclusive bargaining representative for its production and maintenance employees

[2] *Matter of City National Bank and Trust Company*, 50 N L R B 516, citing *Matter of Virginia Electric & Power Company* v *N L R B.*, 314 U S 469

Employer's second contention that its guards may not, as special policemen of the City of Boston, be represented by the same union which represents its production and maintenance employees. Recently, in the *Monsanto Chemical Company* case,[3] the majority of the Board reaffirmed prior holdings[4] that the benefits of the Act should not be denied to guards where they seek to be represented for collective bargaining purposes by the same labor organization which represents employees over whom their monitorial function is exercised. We perceive no reason for reaching a different result here because the guards in question have also been commissioned as special policemen on the Boston police force.[5] Accordingly, we are persuaded that the Employer's plant guards may function together for collective bargaining purposes.

As indicated above, the parties are in dispute with respect to the chief guard; Petitioner would exclude him as supervisory, while the Employer would include him. This employee originally performed duties similar to the other guards. Recently, however, he has been placed in charge of the Employer's guard force, in which capacity he relays orders from management to the other guards, acts as a roving guard to "spot check" the other guards, and insures that fire and safety regulations are observed by all. He also makes confidential investigations of the Employer's employees regarding breaches of its rules, thefts and absenteeism, as a supplemental check against the routine reports filed by the other guards concerning such incidents. In addition he is required to stand a regular guard shift in the absence of one of the regular guards. He receives approximately 12 percent more in wages than the other guards. Although he has no authority to hire or discharge, he is generally responsible for the actions of the guard force and bears the responsibility for its general discipline.

Under the foregoing circumstances, we are persuaded that this employee is a supervisor within our customary meaning of the term. We shall, therefore, exclude him from the unit.

We find that all guards employed by the Employer at its plant in East Boston, Massachusetts, including the night guard, but excluding the gardener, the chief guard, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

---

[3] 71 N L R B 11

[4] *Matter of Seeger-Sunbeam Corporation, Evansville Division,* 69 N L R B 985, *Matter of Dravo Corporation,* 52 N L R B 322

[5] The Employer cites *N. L. R. B. v. Jones & Laughlin Steel Corporation,* 154 F. (2d) 932 (C. C. A. 6), in support of its position. However, the Board does not acquiesce in that decision, and has filed a petition for certiorari in the Supreme Court.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with A. S. Campbell Company, Inc., East Boston, Massachusetts, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the First Region, acting in this matter as agent for the National Labor Relations Board, and subject to Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Electrical, Radio & Machine Workers of America, C. I. O., for the purposes of collective bargaining.

MR. JAMES J. REYNOLDS, JR., dissenting:

For the reasons stated in my dissenting opinion in the *Monsanto Chemical Company* case,[6] which I find equally applicable here, I would dismiss the present petition.

[6] 71 N. L. R. B. 11.